

RECORDS RETENTION & THE PUBLIC RECORDS ACT

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RECORDS RETENTION REQUIREMENTS

- ❖ State law requires retention of records that have been made or received in connection with the transaction of business.
- ❖ Retention periods vary depending on the content of the records, and certain records have minimal retention value.
- ❖ Every member of a King County board, commission, and committee should retain the records related to their work on the board, commission, or committee, except records with minimal retention value.



RECORDS WITH MINIMAL RETENTION VALUE

- ❖ Records of short-term, temporary information use may be destroyed if no longer needed for agency business.
Examples:
 - ❖ Personal messages and announcements not related to official business;
 - ❖ Information-only copies or extracts of documents distributed for convenience of reference;
 - ❖ Published reference materials;
 - ❖ Copies of memoranda, bulletins or directions of a general information and non-continuing nature;
 - ❖ Announcements of social events, such as retirement parties or holiday celebrations.



RECORDS MAY BE REQUESTED UNDER THE PUBLIC RECORDS ACT

- ❖ The records retention requirements are separate from public disclosure requirements.
- ❖ In Washington, public disclosure is governed by the Public Records Act (PRA).
- ❖ The following slides outline the requirements of the Public Records Act.
- ❖ Important note: once a record has been requested under the PRA, it cannot be destroyed before it is produced to the requestor, even if it has minimal retention value.



THE INTENT OF THE PEOPLE

- ❖ The people of this state do not yield their sovereignty to the agencies that serve them.
- ❖ The people have not given public employees the right to decide what is good for the people to know and what is not good for them to know.
- ❖ The PRA shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.



WHAT ARE PUBLIC RECORDS UNDER THE PRA?

- ❖ Any writing
- ❖ Relating to the conduct/performance of any governmental or proprietary function, and
- ❖ Prepared, owned, used or retained by any state or local agency.



HOW IS “WRITING” DEFINED?

“Writing” means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation...

...including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.”
RCW 42.56.010(3).



EXAMPLES OF RECORDS

Paper/Hardcopy Records

Letters

Faxes

Notes

Agendas

Meeting Minutes

Contracts

Public Comment Forms

Ordinances

Electronic Records

Emails

Word Documents

Spreadsheets

PDFs

Calendars

Photographs

Videos

Databases



FORMAT OF THE REQUEST:

Public disclosure requests do NOT have to be in writing.

Look for language such as:

- ❖ “public records request” / “public disclosure request”;
- ❖ “Freedom of Information Act Request” or “FOIA”;
- ❖ “formal records requests”.

Be aware of hidden requests.



IF RECORDS ARE REQUESTED

- ❖ If you receive a public records request, notify your liaison immediately.
- ❖ If King County asks you to provide records in order to respond to a public records request, produce all records asked for by your liaison or the public records officer.



LEGAL OBLIGATIONS ONCE A REQUEST IS RECEIVED

- ❖ Agencies are required to promptly make available for inspection and copying all identifiable public records unless the record falls within the specific exemptions of the Act or another statute. RCW 42.56.070.
- ❖ Agencies shall provide the fullest assistance to requestors. RCW 42.56.100.
- ❖ A response is required in writing within five business days. RCW 42.56.520.



THE 5-DAY RESPONSE LETTER MUST:

- ❖ Provide the requested records; or
- ❖ Provide the internet address and link on the agency's web site to the specific record(s) requested; or
- ❖ Acknowledge the request and provide a reasonable estimate of the time needed to respond; or
- ❖ Deny the request in accordance with the law.



THE PUBLIC RECORDS ACT DOES NOT REQUIRE RESPONDING AGENCIES TO:

1. Create records, or
2. Respond to requests for information, or
3. Explain records.



REQUESTORS NOT REQUIRED TO PROVIDE THEIR NAME OR STATE THEIR USE OR PURPOSE, EXCEPT:

- ❖ In order to determine whether the requestor is going to use a requested list of individuals for a "commercial purpose." RCW 42.56.070(9).
- ❖ When records are only available to certain individuals (e.g., medical records, autopsy reports).



AGENCY'S OBLIGATIONS WHEN REDACTING OR EXEMPTING RECORDS:

The responding agency must identify each record withheld or redacted, and the legal justification for doing so. Even if an agency is entitled to withhold a record, if the requestor is not provided with a justification for the non-disclosure, the agency will be liable if the requestor sues for a violation of the PRA. *Citizens for Fair Share v. Dept. of Corrections*, 117 Wn. App. 411, 72 P.3d 206 (2003).

If only a portion of a document is exempt, the responding agency must redact that portion and release the remainder of the document.



WITHHOLDING INDEX

A claim of exemption should be in the form of a withholding index (sometimes called a privilege log) in order to trigger the one year statute of limitations. *Rental Housing Ass'n of Puget Sound v. City of Des Moines*, 165 Wn.2d 525, 199 P.3d 393 (2009).



EXEMPTIONS: ATTORNEY CLIENT PRIVILEGE

- ❖ Exempts a client's request for legal advice, legal advice the lawyer provides, and the client's questions about that advice.
- ❖ The client must intend for the communication to be confidential.
- ❖ Does not exempt client records just because the lawyer is cc'd.



EXEMPTIONS: PERSONNEL/PERSONAL RECORDS

- ❖ All applications for public employment, including the names of applicants, resumes and other related materials submitted with respect to an applicant. RCW 42.56.250(2).
- ❖ The residential addresses, residential telephone numbers, personal cell phone numbers, personal e-mail addresses, social security numbers and emergency contact information of employees or volunteers of a public agency.
- ❖ Names and dates of birth are exempt for dependents of employees and volunteers, but they are not exempt for employees and volunteers.



RISKS ASSOCIATED WITH FAILURE TO COMPLY WITH THE PRA

- ❖ If requestor prevails in a court case, they are entitled to **MANDATORY** penalties of \$5-\$100 per day, plus attorney's fees.
- ❖ Strict liability standard; no exceptions for acting in good faith.
- ❖ Statute of limitations for bringing legal action is one year from agency's claim of exemption or the last production of a record on a partial or installment basis.



COUNTY EMAIL ACCOUNTS

- ❖ You will be provided with a county email account in the future.
- ❖ Please use this account for the performance of your duties on behalf of the county.

